

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RANDY RAMOS, FELIX RAMOS, and R [REDACTED] R [REDACTED]
[REDACTED] by his parent and natural guardian MILAGROS
RAMOS,

Plaintiffs,

-against-

THE CITY OF NEW YORK, COMMISSIONER
RAYMOND KELLY, COMMISSIONER MARTIN F.
HORN, DETECTIVE JAMES APOSTOLOU (Shield #
470), POLICE OFFICER JOHN DOES 1-20 SUPERVISOR
POLICE OFFICER JOHN DOES 1-3, CORRECTION
OFFICER JOHN DOES 1-20, SUPERVISOR
CORRECTION OFFICER JOHN DOES 1-5, SENIOR
SUPERVISOR CORRECTION OFFICER JOHN DOES 1-
5, the individual defendants sued individually and in their
official capacities,

Defendants.

COMPLAINT

05 CV 8312 (DLC) (THK)

ECF Case

Jury Trial Demanded

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PRELIMINARY STATEMENT

1. This is a civil rights action in which plaintiffs seek relief for the violation
of their rights secured by 42 U.S.C. § 1983, the First, Fourth, Fifth, Sixth, and Fourteenth
Amendments to the United States Constitution, and the laws of the State of New York. The
claims arise from an incident, which occurred on or about July 9, 2004. During the incident
members of the New York City Police Department (“NYPD”) and New York City Department
of Correction (“DOC”) subjected plaintiffs to, among other things, false arrest, excessive force,
an unlawful search and seizure, unlawful strip search, assault and battery, intentional and
negligent infliction of emotional distress, retaliation for free speech, fabricated evidence,
conspiracy, harassment, abuse of process, negligent hiring and retention of incompetent and unfit

employees, negligent supervision, training and instruction of employees. Plaintiffs seek compensatory and punitive damages, declaratory relief, an award of costs and attorney's fees, and such other and further relief as the Court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983, and the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Plaintiffs invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1337 to hear and decide claims arising under state law. A notice of claim was duly filed on the City of New York within 90 days of the incident at issue, more than 30 days have elapsed since such filing, and the City has refused to settle plaintiffs' claims. Moreover, this action was filed within one year and 90 days of the incidents that are the basis of this case.

4. Venue is proper here pursuant to 28 U.S.C. § 1391 because the acts in question occurred in New York County and Bronx County.

PARTIES

5. Plaintiff Randy Ramos, Sr. is a resident of the State of New Jersey, Bergen County.

6. Plaintiff Felix Ramos is a resident of the State of New Jersey, Bergen County.

7. Plaintiff [REDACTED] is a resident of the State of New Jersey, Bergen County.

8. The City of New York is a municipal corporation organized under the laws of the State of New York.

9. Commissioner Raymond Kelly is the Commissioner of the NYPD who violated plaintiffs' rights as described herein.

10. Commissioner Martin F. Horn is the Commissioner of DOC who violated plaintiffs' rights as described herein.

11. Detective James Apostolou is a New York City Police Officer employed at the "MNNW" and/or 30th Precinct located in New York, New York who violated plaintiffs' rights as described herein.

12. Police Officer John Does # 1-20 are New York City Police Officers employed at the "MNNW" and/or 30th Precinct located in New York, New York who violated plaintiffs' rights as described herein.

13. Supervisor Police Officer John Does # 1-3 are a New York City Police Officer employed at the "MNNW" and/or the 30th Precinct located in New York, New York who violated plaintiffs' rights as described herein.

14. Correction Officer John Does # 1-20 are New York City Correction Officers employed at the New York County Jail a.k.a. "the Tombs" located in New York, New York and the Rikers Island Detention Centers located in East Elmhurst, New York who violated plaintiffs' rights as described herein.

15. Supervisor Correction Officer John Does # 1-5 are New York City Correction Officers employed at the New York County Jail a.k.a. "the Tombs" located in New York, New York and the Rikers Island Detention Centers located in East Elmhurst, New York who violated plaintiffs' rights as described herein.

16. Senior Supervisor Correction Officer John Does # 1-5 are New York City Correction Officers employed at the New York County Jail a.k.a. "the Tombs" located in New

York, New York and the Rikers Island Detention Centers located in East Elmhurst, New York who violated plaintiffs' rights as described herein.

17. The individual defendants are sued in their individual and official capacities.

STATEMENT OF FACTS

18. The following is a summary set for the purpose of demonstrating, averring, and providing notice of plaintiffs' claims against the defendants. Plaintiffs have not set forth each and every fact concerning the incident described below.

19. On or about July 9, 2004, at approximately 12:30 p.m., at 4963 Broadway in New York, New York, police officers assigned to the "MNNW" and/or the 30th Precinct, including Detective James Apostolou, Shield # 470, committed the following illegal acts against the plaintiffs as described below.

20. Plaintiff [REDACTED] a 16 year old student, was working at the Ramos family business located at 4963 Broadway in New York, New York, when unbeknownst to him he was approached inside 4963 Broadway by an undercover NYPD police officer dressed as a Federal Express employee carrying a package ("P.O. John Doe #1").

21. P.O. John Doe #1 asked [REDACTED] if he was expecting a package and if would sign for the package he was carrying.

22. [REDACTED] could not read the address on the package being carried by P.O. John Doe #1, and being a minor he could not sign for the package.

23. However, at the insistence of P.O. John Doe #1 [REDACTED] signed for the package then walked with P.O. John Doe # 1 carrying the package to the back of 4963 Broadway where his grandfather Felix Ramos was located.

24. At that time, Detective Apostolou, P.O. John Does # 2-15 and, upon information and belief, Supervisor P. O. John Doe # 1 entered 4963 Broadway, New York, New York without either consent, an arrest warrant, a search warrant, probable cause, or reasonable suspicion that a crime had been committed by the plaintiffs or any employee at 4963 Broadway, New York, New York.

25. Thereafter, Detective Apostolou, P.O. John Does # 1-15 and, upon information and belief, Supervisor P.O. John Doe # 1, without either an arrest warrant, probable cause or reasonable suspicion that plaintiffs had committed any crime or that a crime had been committed in 4963 Broadway, New York, New York, falsely arrested and held without justification [REDACTED] . and Felix Ramos.

26. During the arrest of Felix Ramos, an elderly man who offered no resistance to the defendant officers' actions, P.O. John Doe # 2 (who was holding a battering ram) maliciously, gratuitously, and unnecessarily grabbed and shoved Felix Ramos, subjecting him to excessive force. In addition, P.O. John Doe # 2 maliciously, gratuitously, and unnecessarily subjected Felix Ramos to excessively tight handcuffs. Those defendants who did not touch plaintiff, witnessed these acts, but failed to intervene and protect plaintiff from this conduct.

27. Felix Ramos's wrists were injured as a result of these acts.

28. During the arrest of [REDACTED], a minor who offered no resistance to the defendant officers' actions, P.O. John Doe # 1 maliciously, gratuitously, and unnecessarily yanked and shoved [REDACTED] subjecting him to excessive force. In addition, P.O. John Doe # 1 maliciously, gratuitously, and unnecessarily subjected [REDACTED] to excessively

tight handcuffs. Those defendants who did not touch plaintiff, witnessed these acts, but failed to intervene and protect plaintiff from this conduct.

29. [REDACTED] wrists were injured as a result of these acts.

30. Thereafter, Detective Apostolou, P.O. John Does # 1-15 and, upon information and belief, Supervisor P.O. John Doe # 1 without either consent, an arrest warrant, a search warrant, probable cause or reasonable suspicion that a crime had been committed by plaintiffs or had occurred within 4963 Broadway, New York, New York illegally searched 4963 Broadway, New York, New York, ransacking and damaging the premises, before finding no evidence of unlawful activity.

31. Furthermore, Randy Ramos, Sr. who arrived at 4963 Broadway, New York, New York while above acts were occurring, was falsely arrested and held without justification without either an arrest warrant, probable cause or reasonable suspicion that he had committed any crime or that a crime had been committed at 4963 Broadway, New York, New York, by Detective Apostolou.

32. During the arrest of Randy Ramos, Sr., who offered no resistance to the defendant officers' actions, Detective Apostolou maliciously, gratuitously, and unnecessarily subjected Randy Ramos Sr. to excessively tight handcuffs. Those defendants who did not touch plaintiff, witnessed these acts, but failed to intervene and protect plaintiff from this conduct.

33. Randy Ramos, Sr. wrists were injured as a result of these acts.

34. After Randy Ramos, Sr.'s arrest, and while still at 4963 Broadway, New York, New York, Detective Apostolou, admitted to Randy Ramos, Sr. that based on his observations and knowledge there was no lawful basis to arrest either [REDACTED] or Felix Ramos since they had committed no crimes to justify their unlawful arrests.

35. In addition, while at 4963 Broadway, New York, New York, Detective Apostolou told Randy Ramos, Sr. that if he did not admit that he had committed a crime, then Detective Apostolou and the other defendants would falsely inform the Manhattan District Attorney that [REDACTED] and Felix Ramos had committed crimes in an attempt to justify their unlawful arrests.

36. Randy Ramos, Sr. did not agree to admit that he committed any crime and thereafter all three plaintiffs were removed to the 30th Precinct located in New York, New York where [REDACTED] and Randy Ramos, Sr. were subjected to public strip search by Detective James Apostolou, and P.O. John Does # 15-20, and upon information and belief, Supervisor P.O. John Does # 1-3.

37. Thereafter, the defendant officers removed the plaintiffs to Manhattan Central Booking.

38. While plaintiffs were incarcerated in Manhattan Central Booking, awaiting arraignment, Detective Apostolou, acting in concert with the other defendants, including, upon information and belief, Supervisor P.O. John Does # 1-3, and pursuant to a conspiracy, falsely and maliciously told the New York County District Attorney's Office that plaintiffs had committed a crime, and based on the officers' false allegations the New York County District Attorney's Office decided to prosecute plaintiffs in New York Criminal Court under Complaint # 2004NY051753, 2004NY051754, and 2004NY051755 for criminal possession of a controlled substance in the 1st and 3rd degrees pursuant to the New York State Penal Law §§ 220.21(1), and 220.16(1).

39. At plaintiffs' arraignment, [REDACTED] was released on bail; however, Randy Ramos Sr. and Felix Ramos were detained and incarcerated in DOC's New

York County Jail facility a.k.a. "the Tombs" and thereafter removed to facilities located within the Rikers Island Detention Centers where they were repeatedly subjected to non-private strip searches by Correction Officer John Does 1-15 and Supervisor Correction Officer John Does 1-5, and Senior Supervisor Correction Officer John Does 1-5 until their release on bail several days later.

40. Plaintiffs Randy Ramos, Sr. and Felix Ramos were repeatedly subjected to DOC's unlawful policy of strip-searching in public regardless of reasonable suspicion or probable cause. Plaintiffs Randy Ramos, Sr. and Felix Ramos were forced to squat and expose their private areas in front of numerous DOC employees, including women, inmates, and detainees.

41. The fact that the strip searches of all three plaintiffs were carried out in a non-private manner is sufficient in and of itself to violate the Constitution. It is well established that, even where there is justification for a strip search the search must be conducted in a reasonable manner. A strip search is unreasonable if it is carried out in a non-private manner and in the presence of nonessential people, such as other detainees.

42. On February 22, 2005, the charges against all three plaintiffs were dismissed.

43. The individual defendants acted in concert committing these illegal acts toward plaintiffs.

44. At no time during the incident did plaintiffs resist arrest.

45. At no time prior, or during, the incident did plaintiffs engage in suspicious, unlawful or criminal conduct.

46. At no time prior, or during the incident did the individual defendants observe plaintiffs engaged in suspicious, unlawful or criminal conduct.

47. At no time prior, or during the incident were the individual defendants provided with information or in receipt of a credible or objectively reasonable complaint from a third person that plaintiffs had engaged in suspicious, unlawful or criminal conduct.

48. As a result of defendants' actions plaintiffs experienced personal and physical injuries (including injuries to their wrists), pain and suffering, fear, an invasion of privacy, psychological pain, emotional distress, mental anguish, embarrassment, humiliation, and financial loss.

**FEDERAL AND STATE CLAIMS AGAINST
THE INDIVIDUAL DEFENDANTS**

49. Plaintiffs repeat and reallege all the foregoing paragraphs as if the same were fully set forth at length herein.

50. The conduct of defendant officers, as described herein, amounted to false arrest, excessive force, an unlawful search and seizure, unlawful strip search, assault and battery, intentional and negligent infliction of emotional distress, retaliation for free speech, fabricated evidence, conspiracy, harassment, abuse of process, negligent hiring and retention of incompetent and unfit employees, negligent supervision, training and instruction of employees, gross negligence in managing subordinates, negligent supervision, training and instruction of employees, and implementation and continuation of an unlawful municipal policy, practice, and custom.

51. The conduct of the defendant officers, as described herein, violated plaintiffs' rights under 42 U.S.C. §§ 1983 and 1985(3), First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution by committing false arrest, excessive force, an

unlawful search and seizure, unlawful strip search, assault and battery, intentional and negligent infliction of emotional distress, retaliation for free speech, fabricated evidence, conspiracy, harassment, abuse of process, negligent hiring and retention of incompetent and unfit employees, negligent supervision, training and instruction of employees, gross negligence in managing subordinates, negligent supervision, training and instruction of employees, and implementation and continuation of an unlawful municipal policy, practice, and custom.

52. Defendants acted under pretense and color of state law and their individual and official capacities and within the scope of their employment. Said acts by said defendants were beyond the scope of their jurisdiction, without authority or law, and in abuse of their powers, and said defendants acted willfully, knowingly, and with the specific intent to deprive plaintiffs of their rights secured by 42 U.S.C. §§ 1983 and 1985(3), Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

53. As a direct and proximate result of the misconduct and abuse detailed above, plaintiffs experienced personal and physical injuries, pain and suffering, fear, an invasion of privacy, psychological pain, emotional distress, mental anguish, embarrassment, and humiliation.

54. The plaintiffs are also entitled to receive punitive damages because defendants' actions were motivated by extreme recklessness and indifference to the plaintiffs' rights.

**FEDERAL AND STATE CLAIMS AGAINST
THE CITY OF NEW YORK**

55. Plaintiffs repeat and reallege all the foregoing paragraphs as if the same were fully set forth at length herein.

56. The City of New York directly caused the constitutional violations suffered by plaintiffs.

57. Upon information and belief, the City of New York was aware from notices of claim, lawsuits, complaints filed with the NYPD and DOC, and the Civilian Complaint Review Board, and from the NYPD's and DOC's own observations, that the officers involved in the present case were unfit to be police or correction officers, and that it was highly likely that they would commit the acts alleged in the present case.

58. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City of New York failed to properly train, retrain, supervise, discipline, and monitor the officers, and improperly utilized and retained them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers and created a culture where officers can harass, assault citizens without consequence. Indeed, when citizens file complaints against officers, the City has a practice of failing to substantiate or addressing the citizen complaint, even under circumstances where the citizen complaint is corroborated and credible, and the account given by the police is unworthy of belief.

59. The aforesaid conduct by the City of New York violated plaintiffs' rights under 42 U.S.C. § 1983, and the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

60. Moreover, the aforesaid conduct by the City of New York amounted to negligent hiring, training, monitoring and retention of incompetent employees, in violation of state law.

61. Finally, under state law, the City of New York is responsible for its employees' actions under the doctrine of respondeat superior.

**FEDERAL AND STATE CLAIMS AGAINST
DEFENDANTS KELLY AND HORN**

62. Plaintiffs repeat and reallege all the foregoing paragraphs as if the same were fully set forth at length herein.

63. Defendants Kelly and Horn are liable, in their official capacity, to plaintiffs because: (1) they created and allowed to continue a policy or custom under which unconstitutional practices occurred, (2) they were grossly negligent in supervisor subordinates who committed the wrongful acts, and (3) they exhibited deliberate indifference to the rights of others by failing to act on information indicating that unconstitutional acts were occurring.

64. Upon information and belief, defendants Kelly and Horn were aware from notices of claim, lawsuits, complaints filed with the Civil Complaint Review Board, Kelly's and the Departments' own observations, that the officers sued in the present case were unfit to be police and correction officers, and that it was highly likely that they would commit the acts alleged in the present case.

65. Nevertheless, defendants Kelly and Horn exercised deliberate indifference by failing to take remedial action.

66. The aforesaid conduct by defendants Kelly and Horn violated plaintiffs' rights under 42 U.S.C. § 1983, and the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution by failing to retrain the defendant subordinate officers, failing to adequately discipline the defendant subordinate officers, failing to adequately investigate prior complaints against the defendant subordinate officers either at the facilities where the incidents occurred, or at Kelly's and Horn's Headquarters located in New York, New York, and creating a

culture where officers are encouraged to harass and assault those question their authority, and acting in manner which amounted to negligent hiring, training, monitoring and retention of incompetent employees, in violation of state law.

67. As a direct and proximate result of the misconduct and abuse detailed above, plaintiffs experienced personal and physical injuries, pain and suffering, fear, psychological pain, emotional distress, mental anguish, embarrassment, and humiliation.

68. The aforesaid conduct of defendants Kelly and Horn amounted to negligent hiring, training, monitoring and retention of incompetent employees, in violation of state law.

WHEREFORE, plaintiffs demand a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper,

including injunctive and declaratory relief.

DATED: New York, New York
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